

limitations on the scope of the authority to be exercised.

[49 FR 7697, Mar. 1, 1984, as amended at 57 FR 59787, Dec. 15, 1992]

PART 2402—DEFINITIONS OF WORDS AND TERMS

Sec.

2402.000 Scope of part.

Subpart 2402.1—Definitions

2402.101 Definitions.

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2402.000 Scope of part.

This part contains definitions of terms used generally throughout the HUDAR, in addition to those set forth in FAR part 2. Additional definitions will be found in individual subparts of the FAR and HUDAR covering terms used in those subparts only.

[49 FR 7699, Mar. 1, 1984]

Subpart 2402.1—Definitions

2402.101 Definitions.

Accounting Office means the Office of Finance and Accounting in headquarters or the Field Accounting Divisions in the field.

Best Value is an approach to source selection that considers the appropriate balance of technical merit, management capability, and cost/price factors in deciding which proposal offers the overall "best value" to the Government. A best value procurement permits the government to award a contract to an offeror with a higher price in order to obtain a better technical product or service with a lower risk that performance will be unsuccessful. The selection decision may be based on a determination of whether to tradeoff paying a higher price to obtain the added value of a particular proposal.

Department—means The Department of Housing and Urban Development, which may also be designated as "HUD".

Head of Contracting Activity (HCA) is defined in accordance with the FAR. The following HUD officials are designated HCAs:

(1) Director, Office of Procurement and Contracts, for HUD Headquarters procurement;

(2) The Directors, Administrative Service Center Contracting Divisions for field procurement;

(3) The President, Government National Mortgage Association (GNMA), for procurement transactions that are conducted by GNMA in accordance with 2401.601-72(c).

Legal Counsel means the Office of General Counsel in Headquarters, or the cognizant Assistant General Counsel in the field.

Lowest-Priced Technically Acceptable Proposal is an approach to source selection under which all evaluation factors, except price, are evaluated on a "Pass-Fail" basis. It is used when price will be the deciding factor once the technical acceptability of proposals has been determined.

Primary Organization Heads are those officials of the Department who are responsible for the major organizational components of HUD and who report directly to the Secretary or Deputy Secretary. The Primary Organization Heads of HUD include: the Assistant Secretaries, the Inspector General, and the General Counsel.

Secretary—means the Secretary of the Department of Housing and Urban Development, or his or her designee.

Senior Procurement Executive—means the Assistant Secretary for Administration. The Senior Procurement Executive's responsibilities are stated in HUDAR 2401.601-70.

Source Selection Official means the head of the office initiating and providing funding for the procurement, or his/her designee. This role may also be delegated to the contracting officer.

[50 FR 46575, Nov. 8, 1985, as amended at 52 FR 47396, Dec. 14, 1987; 53 FR 46534, Nov. 17, 1988; 57 FR 59787, Dec. 15, 1992; 58 FR 49437, Sept. 23, 1993; 60 FR 46154, Sept. 1995]

PART 2403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

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- 2403.601 Policy.
- 2403.670 Solicitation provision and contract clause.

AUTHORITY: 42 U.S.C. 3535(d).

SOURCE: 49 FR 7700, Mar. 1, 1984, unless otherwise noted.

Subpart 2403.1—Safeguards

2403.101 Standards of conduct.

Detailed rules which apply to the conduct of HUD employees are set forth in 24 CFR part 0.

Subpart 2403.2—Contractor Gratuities to Government Personnel

2403.203 Reporting procedures.

Suspected violations of the gratuities clause (FAR 52.203–3) shall be reported to the Head of the Contracting Activity (HCA) in writing. The HCA will request the Office of Inspector General (OIG) to conduct any necessary investigation. Upon receipt of the OIG report, the HCA will evaluate the circumstances to determine if a violation has occurred. The HCA will refer violations and recommended corrective actions to the Senior Procurement Executive for disposition.

[49 FR 7700, Mar. 1, 1984, as amended at 51 FR 7948, Mar. 7, 1986]

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2403.204 Treatment of violations.

The Senior Procurement Executive will process violations in accordance with FAR 3.204.

[49 FR 7700, Mar. 1, 1984, as amended at 51 FR 7948, Mar. 7, 1986]

Subpart 2403.3—Reports of Suspected Antitrust Violations

2403.303–70 Reporting requirements.

Potential anti-competitive practices such as described in FAR subpart 3.3, evidenced in bids or proposals, shall be reported to the Office of General Counsel through the Head of the Contracting Activity with a copy to the Senior Procurement Executive and the Inspector General. The Office of General Counsel will provide reports to the Attorney General as appropriate.

[49 FR 7700, Mar. 1, 1984, as amended at 51 FR 7948, Mar. 7, 1986]

Subpart 2403.4—Contingent Fees

2403.408–1 Responsibilities.

(b) The contracting officer's documentation of the evaluation, conclusion, and any proposed actions shall be submitted for the review and approval of the Head of the Contracting Activity and the Office of General Counsel.

2403.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) Government personnel who suspect or have evidence of attempted or actual exercise of improper influence, misrepresentation of a contingent fee arrangement, or other violation of the Covenant against Contingent Fees shall report the matter promptly to the Head of the Contracting Activity.

(b) When there is specific evidence or other reasonable basis to suspect one or more of the violations in paragraph (a) of this section, the Head of the Contracting Activity shall review the facts and, if appropriate, take or direct one or more of the following, or other, actions:

(1) If before award, reject the bid or proposal.

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(2) If after award, enforce the government's right to void the contract or to recover the fee.

(3) Initiate suspension or debarment action.

(4) Refer suspected fraudulent or criminal matters to the Office of Inspector General for possible referral to the Department of Justice.

Subpart 2403.5—Other Improper Business Practices

2403.502 Subcontractor kickbacks.

(b) Contracting Officers shall report suspected violations of the Anti-Kickback Act through the Head of the Contracting Activity to the Office of Inspector General consistent with the procedures for reporting any violation of law contained in HUD Handbook 2000.3, REV. 2, Office of Inspector General Activities (1983).

Subpart 2403.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

2403.601 Policy.

The Senior Procurement Executive must approve exceptions to the restriction against contracts with Government employees under FAR subpart 3.6. In addition, the Contracting Officer shall comply with FAR subpart 9.5 before awarding any such contract.

[49 FR 7700, Mar. 1, 1984, as amended at 51 FR 7948, Mar. 7, 1986]

2403.670 Solicitation provision and contract clause.¹

Insert the clause at 2452.203-70 in all solicitations and contracts, and the

¹This HUDAR provision/clause has been submitted to the FAR Secretariat for consideration as FAR coverage with Government-wide application. In the event that similar

provision at 2452.203-71 in all solicitations.

[57 FR 59788, Dec. 15, 1992]

PART 2404—ADMINISTRATIVE MATTERS

AUTHORITY: 42 U.S.C. 3535(d).

Subpart 2404.8—Government Contract Files

2404.805 Storage, handling and disposal of contract files.

(a) Unsuccessful cost and technical proposals shall be retained in the contracting activity for a period of two months following the contract award as reference material for debriefings. Upon expiration of the two month period, the contracting office shall either:

(1) Retain one copy of each such proposal with the official contract file; or,

(2) Ship one copy of each unsuccessful bid or proposal to the Federal Records Center unless a debriefing has been requested but not held, or a protest is pending concerning the procurement. In no event shall these documents be destroyed before expiration of the retention periods in FAR 4.805.

(b) *By the program office.* Unsuccessful proposals shall be retained on file in the program office which conducted the technical evaluation for a period of two months following the contract award. Upon expiration of the two month period, the program office shall return one copy of each unsuccessful bid or proposal not required for the conduct of debriefings to the contracting activity for proper disposition. The remaining copies will be destroyed.

[49 FR 7700, Mar. 1, 1984; 49 FR 10930, Mar. 23, 1984. Redesignated and amended at 60 FR 46155, Sept. 5, 1995]

FAR coverage is issued, HUD will rescind the corresponding HUDAR text.